HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE

WRIT PETITION No. 36214 OF 1998

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Between:

S. Mohd. Basha

.... Petitioner

AND

A.P.S.E.Board,
Rep. by its Member Secretary,
Hyderabad & others

.....Respondents

:: O R D E R ::

Counsel for the petitioner : Shri K. Vasudeva Reddy

Counsel for the respondents : Shri Samineni Kishore

Dated: 24.01.2007

In this petition, the petitioner has prayed for grant of a declaration that failure of the erstwhile Andhra Pradesh State Electricity Board (for short 'the Board') (now represented by Central Power Distribution Company Limited) to count his service as Typist in Kadiri West Rural Electric Co-operative Society, Kadiri (for short 'the society') for the purpose of grant of pay-protection and other service benefits is illegal. He has further prayed for issue of a direction to the respondents to treat his service as continuous with effect from 07.08.1985 (07.051985).

A perusal of rather scanty pleadings of both the parties reveal that after having worked as casual labour in Hindupur Division of the erstwhile Board from 10.06.1980 to 20.12.1981 and then under the society from 01.04.1984 to 06.05.1985. The petitioner was regularly appointed as Typist in the employment of the society with effect from 07.05.1985. In July, 1991, he was selected for appointment as a Lower Division Clerk (Trainee) in the Board. He joined the service of the Board as Trainee Lower Division Clerk on 14.08.1991. Later on, he appears to have been appointed as regular Lower Division Clerk in the time scale of Rs.1330-2375. After about five years, the petitioner represented to the competent authority of the Board for counting the service rendered by him as Typist in the society for the purpose of fixation of seniority, pay protection and grant of other benefits. Superintending Engineer, Operation Circle, Kurnool vide his letter dated

13.05.1997 favourably recommended his case, but the competent authority of the Board did not accept the same and this is the reason why he has invoked the jurisdiction of this Court under Article 226 of the Constitution of India.

Shri K. Vasudeva Reddy, learned counsel for the petitioner relied on Regulation 37 of Andhra Pradesh State Electricity Board Service Regulations Part II and argued that the period during which the petitioner worked as Typist in the services of the society is liable to be counted as part of his service under the Board and he is entitled to the benefit of pay protection etc. because 50% shares of the society were held by the erstwhile Board and the officers of Board were managing its affairs and activities of distribution of electricity in the rural areas. Sri Reddy submitted that remaining 50% shares of the society were held by the Rural Electrification Corporation of India and, therefore, it must be treated as an instrumentality of the Board.

Shri Samineni Kishore, learned counsel for the respondents controverted the submission of Shri Reddy and argued that the petitioner's service as Typist in the employment of the society cannot be counted as part of the service rendered in the employment of the Board because the society is an independent registered body, whereas the Board is a creature of statute. Learned counsel further argued that the provision contained in Clause (c) of Regulation 37 is of no avail to the petitioner because at the time of selection for appointment as Lower Division Clerk by direct recruitment in 1991, he was not a member of the service.

I have considered the respective submissions. In my opinion, the writ petition is meritless and is liable to be dismissed. Undisputedly, the Board is a statutory body constituted under Section 5 of the Electricity (Supply) Act, 1948 and the society is a body registered under the Andhra Pradesh Societies Registration Act, 2001. Therefore, the mere fact that the Board held 50% shares of the society and remaining 50% shares were held by the Rural Electrification Corporation of India and the activities of the society are akin to those of the Board cannot lead to an inference that the society is an integral part of the Board or its establishment. As a corollary to this, it must be held that the service rendered by the petitioner as Typist in the society cannot be treated as part of his service under the Board and the period during which he worked as Typist in the service of the society cannot be counted for the purpose of fixation of seniority, pay protection etc. in the employment of the Board.

A reading of order dated 29.07.1991, copy of which has been produced by Shri Vasudeva Reddy during the course of hearing, shows that the petitioner was selected for appointment as Lower Division Clerk (Trainee) as a fresh candidate. Thus, there is no escape from the conclusion that the petitioner's appointment as Lower Division Clerk in the Board's service had no nexus with his previous service as Typist under the society. Consequently, the service rendered by the petitioner in the employment of the society cannot be counted for the purpose of determination of his right to seniority or protection of pay etcetera in the employment of the Board.

Regulation 37, on which reliance has been placed by Shri Reddy, reads as under:

"**37. Resignation:-**

(a) A member of a service may resign his appointment and the acceptance of his resignation by the appointing authority shall take effect –

(i) in a case he is on duty, from the date on which he is relieved of his duties in pursuance of such acceptance;

(ii) in case he is on leave, from the date of communication of such acceptance to the member or if the said authority so directs, from the date of expiry of leave; and

(iii) in any other case, from the date of communication of such acceptance to the member or from such other date not being earlier than the date on which he

was last on duty, as the said authority may, having regard to administrative exigencies, specify;

Provided that a resignation of a member of a service, who is placed under suspension from service pending investigation for enquiry into grave charges or who is deemed to have been suspended under regulation 11 of Andhra Pradesh State Electricity Board Employees Discipline and Appeal Regulation shall not be accepted during the period of such suspension; and

Provided further no withdrawal of resignation shall be permitted except with the sanction of the Board after the date of its actual acceptance by the appointing authority.

(b) A member of service, shall if he resigns his appointment, forfeit not only the service rendered by him in the particular post held by him at the time of resignation but all his previous service under the Board and the Government, if any.

The re-appointment of such person to any service shall be treated in the same way as a first appointment to such service by direct recruitment and all regulations governing such appointment shall apply; and on such re-appointment, he shall not be entitled to count any portion of his previous service for any, benefit or concession admissible under any regulation or order.

(c) A member of a service or services who is selected for appointment by the direct recruitment to another post, category or class in the same or different service and is appointed to it, shall, as soon as he is appointed to the post, category or class for which he has been selected by direct recruitment, be deemed to have resigned from the service or services of which he is a member prior to his appointment as aforesaid.

Provided that nothing in this sub-regulation shall affect the benefit accrued to such member of a service or services in the previous post or posts, except the lien or probationary right, as the case may be, on such post or posts.

(d) Acceptance of resignation while serving abroad.

The Board employees on deputation abroad to international organisations or foreign Governments who wish to resign from service should return to India and join the Board before their resignations can be accepted.

Provided that this regulation shall not be operative on the right of an employee of the Board to retire voluntarily if he is eligible to do so."

A reading of the above reproduced regulation shows that it primarily deals with resignation by a member of the service and acceptance thereof. Clause (c) of Regulation 37 lays down that if a member of the service of the Board is selected for appointment by direct recruitment to another post, category or class in the same or different service and is appointed to it, he shall be deemed to have resigned from the previous service of which he is a member. Proviso to this clause ensures for protection of service benefits already earned by such employee.

In my opinion, the petitioner cannot take benefit of Clause (c) of Regulation 37 because, at the time of his selection for appointment as Lower Division Clerk, he was not a member of the service. At the relevant time, he was employed as a Typist in the service of the society. Therefore, his appointment as Lower Division Clerk in the service of the Board cannot be treated in continuation of his service in the society and his past service cannot be counted for the purpose of fixation of seniority and grant of other service benefits.

No other point has been argued.

In the result, the writ petition is dismissed. The petitioner shall pay cost of Rs.2,000/- to the respondents.

G.S.SINGHVI, CJ

24.01.2007

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